

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20479 of 2018

Butan Sah son of Ramchandra Sah resident of village Mahathin Mai Road,
Bihiya P.S. Bihiya District Bhojpur Ara

... .. Petitioner

Versus

- 1.The State of Bihar through Director Excise Department Bihar, Patna.
- 2.The District Magistrate, Bhojpur, Ara
- 3.The Assistant Commissioner, Excise Bhojpur, Ara
- 4.The Sr. Superintendent of Police Bhojpur, Ara
- 5.The Officer Incharge Police Station, Bihiya District Bhojpur, Ara

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Kamal Kumar Sinha, Adv.
For the Respondent/s : Mr. Vikash Kumar, SC 11

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 22-04-2019

Heard learned counsel for the petitioner and learned
counsel for the State.

This application has been filed seeking provisional
release of the Mahendra Centuro 01 Motorcycle bearing
registration No. BR03U 7910, Chasis No. MCDKG 1B 14H1A
09037, Engine No. UPEGM002007 seized in connection with
Bihiya P.S. Case No. 63/2017 offences under Sections 30(a)/56
under the provisions of the Bihar Prohibition and Excise Act,
2016.

Apart from a prayer for release of the vehicle the
petitioner has also prayed for quashing of the order dated
16.02.2018 passed by the District Magistrate, Bhojpur at Ara in



Miscellaneous Appeal (Excise) Case No. 90/2017 by which a direction to confiscate the vehicle has been passed by the District Magistrate being the Confiscating Authority.

Learned Counsel for the petitioner submits that for the present he would not be pressing the relief for quashing of the order dated 16.02.2018 passed by the District Magistrate, Bhojpur at Ara in Miscellaneous Appeal (Excise) Case No. 90/2017, he, however, submits that liberty may be granted to the petitioner to challenge the confiscation order in an appropriate jurisdiction by filing an appeal before the Commissioner within a period of 30 days from today.

In the circumstance noted where final orders have been passed in the confiscation proceedings, we grant liberty to the petitioner to challenge the order of confiscation before the appellate authority within a period of 30 days from today. In case such an appeal is preferred within the aforesaid period together with an application for condonation of delay, the appellate authority shall consider the same keeping in mind that the petitioner was prosecuting his remedy before this Court and the appeal shall be heard on its own merit and disposed of expeditiously.



Learned Counsel for the petitioner, at this stage, submits that because the appellate authority has no power to pass an interim order of release, he would press this application for a provisional release of the vehicle in question.

Learned Counsel for the petitioner submits that 36 liters of Foreign liquor has been seized; the vehicle is lying under open sky in the Police Station during last one year and if the release is not allowed, it would turn into a junk. He submits that the State is not going to gain by the vehicle turning junk. Learned Counsel further submits that the petitioner is willing to provide such surety and undertakings which may be required to protect the interest of the petitioner as well the State, during the pendency of the appeal.

Learned Counsel for the State is present and submits that in the given facts and circumstances of this case if at all the Court is willing to consider provisional release of the vehicle then interest of the State is required to be protected.

Bearing note of the order of release passed in similar circumstance in C.W.J.C. No. 8513 of 2018 whereby a provisional release has been allowed during the pendency of appeal subject to conditions imposed to protect the interest of the State, we take a similar view in the present case as well.



Let the vehicle in question be accordingly released provisionally in favour of the petitioner on the production of the document of ownership and registration in his name before the District Magistrate, Bhojpur at Ara (Confiscating Authority) with two sureties (one local) to the extent of the value of the vehicle as indicated in the insurance document.

The petitioner while submitting the surety bond shall also furnish the following affidavits/undertakings:-

(i) That the vehicle in question has never been involved in any offence of similar nature in past and shall not indulge in similar offence in future.

(ii) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the appeal and shall not alienate the vehicle during this period.

(iii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iv) Prior to release of the vehicle a Panchnama would be got prepared by the confiscating authority wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and the same shall be kept on record so that in future



if so required it may be used as a secondary evidence. The petitioner shall undertake not to challenge the said Panchanama in course of trial.

If the petitioner fails to present an appeal within 30 days as given above, the order of provisional release shall stand withdrawn and the Confiscating Authority shall be at liberty to proceed in accordance with law.

The release shall be allowed within a period of 14 days from the date of submission of the sureties along with the undertakings as stated above. This release would, however, be subject to the order passed in appeal.

The writ petition is allowed with the directions/observations above.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Archana/
Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2019
Transmission Date	NA

